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MAY - 1 2007

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May 1, 2007

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-A235
Washington, DC 20554

R E TRS Fund Administration
CG Docket No. 03-123

Dear Ms. Dortch:

In accordance with 47 C.F.R. § 64.604 (c)(5)(iii)(H), enclosed **are** the original and four (4) copies of the National Exchange Carrier Association, Inc.'s Annual Submission of **TRS** Payment and Revenue Requirements, for July 2007 – June 2008.

Acknowledgment and date of receipt of this letter is requested. A duplicate copy has been provided for that **purpose**.

Sincerely,

Enclosures

No. of Copies rec'd 014
List ABCDE

Cc: Thomas Chandler, Consumer and Governmental Affairs Bureau
Jay Keithley, Consumer and Governmental Affairs Bureau
Gregory Hlibok, Consumer and Governmental Affairs Bureau
Andrew Mulitz, Consumer and Governmental Affairs Bureau
James Lande, Wireline Competition Bureau
Mark Stephens, Office of the Managing Director
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing filing was served this 1st day of May, 2007, by mailing copies thereof by United States Mail, first class postage paid, by express mail, or by hand delivery, to the persons listed below.



Jill Cardoso

The following parties were served:

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MAY - 1 2007

Federal Communications Commission
Office of the secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:

Telecommunications Services for
Individuals with Hearing and
Speech Disabilities, and the
Americans with Disabilities Act
of 1990

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CC Docket 03-123

Interstate Telecommunications Relay Services Fund

Payment Formula and Fund Size Estimate

National Exchange
Carrier Association, Inc.
80 South Jefferson Road
Whippany, NJ 07981
May 1, 2007

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Federal Communications Commission
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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of:

Telecommunications Services for
Individuals with Hearing and
Speech Disabilities, and the
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of 1990

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CC Docket 03-123

Payment Formula and Fund Size Estimate
Interstate Telecommunications Relay Services (TRS) Fund
For July 2007 through June 2008

I. Introduction

The National Exchange Carrier Association, Inc. (NECA), as Interstate Telecommunications Relay Services (TRS) Fund Administrator (the Administrator), herein submits several alternative provider payment formulas, fund size estimates and carrier contribution factors for the period July 2007 through June 2008, in accordance with Section 64.604 ~~of~~ the Federal Communications Commission's (FCC or Commission) rules.'

The alternative formulas and fund size estimates described herein are based on suggested alternative methodologies included in the Commission's Further Notice ~~of~~ Proposed Rulemaking (**FNPRM**) in the above-captioned proceeding.² These alternative

¹ 47 C.F.R. § 64.604 (c)(5)(iii)(H).

² See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, *Further Notice of Proposed Rulemaking*, CG Docket No. 03-123, FCC 06-106, (rel. July 20, 2006) (**FNPRM**).

methods primarily utilize the cost and demand projections received from providers of relay services, resulting in several alternative reimbursement rates for traditional TRS, Speech to Speech (STS), Video Relay Service (VRS) and Internet Protocol Relay Service (**IP**), for the 2007 – 2008 funding period.

These alternative methodologies may result in an overall fund requirement of as little as \$397.0 million, or as much as \$575.4 million, **for** 2007-2008. Calendar year 2006 interstate and international revenues totaled \$76.8 billion, approximately 2.2% below the 2005 reported revenues, meaning the proposed contribution factor will need to be between 0.0052 and 0.0075, depending on which compensation formulas the Commission adopts. Upon approval of a specific approach **by** the Commission, the Administrator **will** begin billing carriers and disbursing funds to relay service providers for the 2007 – 2008 funding period in July 2007.

II. Interstate TRS Fund

The TRS Fund is designed to compensate eligible relay service providers for the reasonable costs of furnishing interstate traditional **TRS** and STS, and both intrastate and interstate **VRS**, **IP**, and **IP** Captioned Telephone service.³ Fund distributions to providers **are** made on ~~the~~ basis of payment formulas initially computed by the Administrator in accordance with Commission **rules**, as approved **or** modified by the Commission.

The Commission's shared funding mechanism for the TRS Fund ensures that the costs **of** meeting relay service obligations are borne equitably. **The** fund requires

³ Eligible providers are defined as (1) **TRS** facilities operated under contract with and/or **by** certified state **TRS** programs pursuant **to** section 64.605; or (2) **TRS** facilities owned **by** or operated under contract with a common carrier providing interstate services pursuant to section 64.604; (3) interstate common carriers offering **TRS** pursuant to section 64.604; **or** (4) direct certification **by** the **FCC** for **IP** and VRS providers... See 47 C.F.R. § 64.604 (c)(5)(iii)(F) and 47 C.F.R. § 64.605 .

contributions from ~~all~~ interstate telecommunications common carriers, on the basis of their relative share of interstate end user revenues.⁴

The TRS funding period commences on July 1 and ends June 30 of the following calendar year. The Administrator will use the carriers' 2006 interstate and international end user revenues reported on the Telecommunications Reporting Worksheet, FCC Form 499-A, on April 1, 2007, and provided by the Universal Service Administrative Company (USAC), the Revenue Data Collection Agent, as the basis for calculating carriers' contributions.

Carriers' 2006 revenues are \$76.8 billion, approximately **\$1.7** billion lower than the \$78.5 billion reported for 2005. Annual contributions **are** due July 26th. Carriers whose contributions are \$1,200 or more may opt to pay in twelve equal monthly installments, due on the **26th** of each month. Approximately 5,850 carriers will be billed during the 2007 – 2008 funding period, of which about **7** percent will be eligible to pay on a monthly basis.

Providers are paid by the end of the month following the month when the minutes were handled. For example, minutes handled by providers in July 2007 **are reported in** August 2007 and providers will then be compensated **for** their July 2007 minutes at the end of August? Historically, providers have been paid on ~~the~~ 20th workday of the month. The Administrator proposes that, beginning in July 2007, provider payments be made on the last

⁴ In its Streamlined Contributor Reporting Requirements Order, the Commission adopted rules requiring every carrier providing interstate telecommunications services to contribute to the TRS Fund on the basis of its relative share of interstate end user revenues. **See** 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, CC Docket No. 98-171, *Report and Order*, 14 FCC Rcd 16602 (1999). These contributions are made by carriers offering interstate services including, but not limited to, cellular telephone and paging; mobile radio; operator services; personal communications service (PCS); access (including subscriber line charges); alternative access and special access; packet-switched: WATS; 800; 900; message telephone service; private line; telex; **telegraph**; video; satellite; intraLATA; international and resale services. **See** 47 C.F.R. § 64.604(c)(5)(iii)(A).

⁵ **See** Exhibit 5 Reporting and Disbursement Schedule.

Friday of the month⁶ The rationale for this proposal stems from the requirement that funds be kept in Government Securities, for which the shortest available investment period is one week. Under the proposed schedule, funds will continue to earn interest up until the day prior to distribution, whereas, under the current schedule, funds could sit in a non-interest bearing account for as long as six days prior to distribution.

III. Data Collection and Analysis

Relay providers continue to be a diverse group. Services are offered by large interstate interexchange carriers, large and small local exchange carriers, non-telecommunications for-profit companies, and not-for-profit organizations. Some providers offer all four services while others only provide one or two. Several providers have been reimbursed for traditional TRS since the inception of the fund in 1993, while new VRS-only providers started receiving reimbursement in the last three to four years.

In light of direction provided in the Commission's **June 30, 2004 TRS Order**⁷ the annual Relay Services Data Request and its instructions were modified to reflect changes in the data and support documentation required for development of the 2007 - 2008 reimbursement rates. Revised data collection forms and instructions were distributed to providers on November 10, 2006.⁸ Providers were directed to submit data separately for TRS, STS, IP and VRS by February 9, 2007.

⁶ In most cases, providers will actually be reimbursed on the same day or sooner under the proposed schedule than they are currently.

⁷ Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CC Docket No. 90-571, CC Docket No. 98-67, CG Docket No. 03-123, **Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking**, 19 FCC Rcd 12475 (2004) (**June 30, 2004 TRS Order**).

⁸ Appendix A contains the Data Collection form and instructions.

When the shared fund commenced in **1993** each relay center operated independently and costs differed from one center to the next for carriers with multiple relay centers. Consequently, cost data were collected on a center-by-center basis. Today, however, most relay providers distribute calls using the next available position methodology, regardless of center location, and allocate their costs across centers based on the number **of** minutes handled. The requirement to provide data on **a** center-by-center basis was virtually eliminated in ~~the~~ September 2004 data collection, except in the area of support for salaries and benefits for center personnel. Data **are now** requested and reported on **a** service-by-service basis rather ~~than~~ on **a** center-by-center basis **as was** the case prior to the **2005** filing.

In the *June 30, 2004 TRS Order*, the FCC confirmed that the reasonable costs of providing TRS included only “~~those~~ direct and indirect costs necessary to provide the service consistent with all applicable regulations governing the provision of the service, *i.e.*, the TRS mandatory minimum standards” and therefore may not include a markup on those costs? However, the FCC did allow the inclusion of **a** return on capital investment of 11.25%, the rate **of** return that the Commission has applied in **a** wide range of telecommunications contexts.” **A** new section on capital investment was added to the data request in 2005 to **allow** providers **to** report those costs. The result of calculating the 11.25% return was included in the development of the average cost **per** minute. In addition, a factor of 1.4% **as** an allowance for cash working capital was added to the total average cost per minute to arrive at the reimbursement rate for each service. The instant filing proposes to increase the cash working capital factor from 1.4% to **1.6%** to recognize the fact that the

⁹ *June 30, 2004 TRS Order* at 181

¹⁰ *Id.* at ¶¶ 181 and 182.

discounted tax rate included in previous filings to reflect minutes handled by not-for-profit entities is no longer appropriate." The revised factor represents one-twelfth, or one month, of the 11.25% rate of return plus a tax allowance.¹²

The *June 30th Compensation Rates Order*¹³ made clear that

The TRS fund administrator's **role** is not simply to rubber-stamp the cost data submitted, but to ensure that the data reflects the 'reasonable costs' of providing the various services in accordance with our **rules**. The Commission's affirmance of the 2003 *Bureau TRS Order* reflects that adjustments to the providers' submitted cost data may be appropriate and necessary to ensure that the compensation rates are based on 'reasonable' costs and **NECA**, as the fund administrator, is surely empowered to make these adjustments in the first instance. Indeed, the TRS regulations provide that the fund administrator shall have the authority to examine, verify and audit data received from TRS providers as necessary to assure the accuracy and integrity of fund payments.' That provision makes clear, implicitly if not explicitly, that the fund administrator is not required to base its proposed compensation rates solely on the raw data submitted by the providers.¹⁴

Cost and demand data reported by relay providers consisted of actual amounts for 2005, annualized actual amounts for 2006, and projections for 2007 and 2008. To support the cost data, providers were required to submit detailed explanations of their expenses in the

¹¹ Not for Profit companies no longer provide a significant portion of provider demand.

¹² More specifically, the 1.6% factor is calculated as follows: (1) the 11.25% rate of return, on a monthly basis, is .9375% (11.25 divided by 12); (2) because the .9375% rate of return is an after-tax rate of return, it must be adjusted to a pre-tax figure, so that the compensation paid for the allowance for working capital equals the 11.25% annualized rate of return after taxes are paid on the compensation received; (3) the tax adjustment is based on a 35% federal tax rate and a 5% state tax rate, which totals 40%; (4) using the 40% rate, and applying the formula to convert from an after-tax allowance to a pre-tax allowance, the result is that the .9375% monthly rate of return must be adjusted by multiplying it by 1.6667, which equals a monthly working capital allowance of 1.6% (that is applied to the per-minute compensation rate that is based on the providers' projected costs and minutes, adjusted as necessary). See NECA's Annual Submission of TRS Payment and Revenue Requirement, for July 2004 – June 2005, CC Docket No. 98-67 (May 3, 2004) at 7 (*NECA 2004 Filing*), Exs. IC, ID, & IE. The formula for converting from an after-tax basis to a pre-tax basis is: $1 + X/(1-X)$, where X = net tax allowance (40%). Therefore, the pre-tax allowance for working capital is calculated as follows: $0.9375 \times [1 + (.40)/(1 - .40)] = (0.9375) \times 1.6667 = 1.562\%$, which was rounded to 1.6%.

¹³ Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CC Docket No. 98-67, Order, 19 FCC Rcd 12224(2004) (*June 30th Compensation Rates Order*).

¹⁴ *Id.* at ¶40 (internal citations omitted)

categories of salaries **and** benefits for relay center personnel, annual administrative expenses (finance, legal, engineering, human resources, and other corporate overheads), depreciation and capital investment, and outreach and marketing/advertising. Actual results, e.g., data for 2005 and 2006, have historically been used for trending purposes and for the review of certain providers as part of the fund Administrator's annual review **process**.¹⁵ Typically, provider projections have been used for formula development for the forthcoming funding period.

IV. TRS Formula Development and Fund Requirement

A. General Formula Development Methodology

In the FNPRM, the Commission sought comment on a broad range of issues related to the methodology used to establish provider compensation formulas for the various TRS services. For example, the Commission sought input on whether the TRS formula and Speech-to-Speech formula should be compensated at the same rate or should continue to be established separately. The Commission sought comment on whether a methodology proposed by Hamilton Telephone Company, the "MARS" plan ("Multi-state Average Rate Structure") that bases provider compensation on the average of contractual rates paid by the states to TRS providers was appropriate for **use** in the interstate jurisdiction.

In addition to the methodology questions raised in the FNPRM, the Commission sought comment on whether, or to what extent, marketing and outreach expenses, overhead

¹⁵ 47 C.F.R. ~~§64.604(c)(5)(iii)(E)~~ specifically authorizes audit of provider submitted data, "The Commission shall have authority to audit providers and have access to all data, including carrier specific data, collected by the fund administrator". The FNPRM also seeks comment regarding the audit of provider data and integrity of the fund @ paragraphs 48 and 49

costs, and executive compensatton should be compensable from the Fund. The Commission also sought comment on whether, under the **MARS** plan or any other cost recovery methodology for traditional TRS, STS, and IF Relay, there should be a “true-up” at the end of the Fund-year based on actual reasonable costs, and how to transition to a cost recovery methodology under which rates are set based on actual reasonable historical costs, thus eliminating any need for a true-up in most, if not all, cases.

Further, the Commission sought comment on the appropriate cost recovery methodology for Video Relay Service (VRS) and the length of time the VRS rate should remain in effect, as well as raising, similar methodological and cost disallowance questions that were raised with the other services.¹⁶

In the June 30, 2004 TRS Order the Commission affirmed that its definition of reasonable costs of providing TRS are “those direct and indirect costs necessary to provide the service consistent with all applicable regulations governing the provision of the service, i.e., the TRS mandatory minimum standards.” It also observed that “[w]e do not believe the Interstate TRS Fund was intended to be a source of funding for the development of TRS services, features, and enhancements that, although perhaps desirable, are not necessary for the provision of functionally equivalent TRS service as an accommodation for persons with certain disabilities”.¹⁸

¹⁶ The Commission, in its June 20, 2006. Order on Reconsideration reaffirmed the general principle that engineering and other expenses for research and development to meet waived mandatory minimum standards, or provide enhancements beyond applicable non-waived mandatory minimum standards, are not compensable from the Interstate TRS Fund.

¹⁷ June 30, 2004 TRS Order at ¶ 181.

¹⁸ *Id.* at ¶190

Given the myriad of potential formula development alternatives proposed in the FNPRM, the Administrator is providing the Commission with alternative payment formulas as well as information and data analyses that will, based on the record, permit the Commission to establish final formulas for the 2007-2008 funding year. These may include: (1) weighted average based on provider projected costs and projected minutes of use; (2) weighted average that reflects disallowances of some costs;¹⁹ (3) using historical costs per minute adjusted for inflation; and (4) using provider projected costs in conjunction with demand based on historical growth rates.

We also note that in the FNPRM the FCC requested comment on the appropriateness of having the interstate TRS Fund pay for Marketing and Outreach Expenses through individual TRS compensation rates. The Commission has previously stated that it expects providers to inform the user community of the availability of TRS capability, i.e., some level of outreach functions.²⁰ Each of the compensation alternatives provided includes and/or excludes marketing and/or outreach expenses.

For analysis purposes, projected costs were segregated into nine distinct categories for review:

- **Facilities**, those expenses associated with land and buildings, etc.;
- **Communications Assistants**, the costs of the individuals performing the interpretive services;''

¹⁹ As in prior years, certain projected cost of some providers appear to be outside the requirements of meeting the minimum standards for provision of the service. The Administrator has identified those costs and is providing the Commission with formula amounts based on the exclusion of those costs as well.

²⁰ See, e.g., Telecommunication Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, WC Docket No. 98-67, CG Docket No. C-98-150, Second Report and Order, Order on Reconsideration, and Notice of Proposed Rulemaking, 18 FCC Rcd 12379 (2003).

²¹ Service provided under contract with another provider has been included in this category as well.

- **Relay Center Operation**, other costs associated with the relay center including supervisory management, telecommunications **expense**, etc;
- **Indirect Expense**, finance, human resources, legal expenses, executive compensation, etc;
- **Depreciation Expense**, annual depreciation on facilities and equipment;
- **Marketing Expense**, the projected costs **of** advertising the provider's service;
- **Outreach Expense**, the projected costs of notifying consumers of service availability;
- **Other Expenses**, projected expenses not directly associated with one of the other expense categories; and
- **Capital Investment**, the investment in facilities, equipment, furniture, etc. associated **with** the relay center.

B. TRS Formula Development and Fund Requirement

The following sections contain a discussion of individual formula alternatives and their development. Also included is a discussion of the demand projections for each of the services and their corresponding fund size projections.

1. Traditional TRS Formula Development

a. Per Minute Compensation

Currently, seven providers receive reimbursement **for** traditional **TRS** interstate minutes. For interstate **TRS**, once the relationship of a provider's interstate and international minutes plus an allocation **of** its toll-free and 900 service minutes is known, a usage-based factor may be applied to a provider's total costs to determine the interstate portion of the costs.

Providers are generally unable to identify the jurisdiction of toll-free calls.²² Based on guidance from the Interstate TRS Fund Advisory Council, the Administrator has, since 1996, developed a factor for **TRS** toll-free minutes based **on** the relationship of traditional TRS interstate and international billed minutes to TRS intrastate toll, interstate and international minutes.

This methodology was used through the **2002 – 2003** funding period. The allocation factor developed for that period was 51 percent interstate. When the same methodology was used to develop the factor for the **2003 – 2004** funding period, a significant shift in projected minutes from traditional TRS to **IP** relay was noted. It did not seem likely that the jurisdiction **of** the calls had changed. Rather, it appeared more **likely** that the factor was distorted by text telephone users migrating to the use of computers and the Internet to access relay **service**.²³

Calls placed using Internet protocol exhibit many of **the** same characteristics as calls placed to toll-free numbers – the provider **is** unable to identify the jurisdiction **of** the call and its associated minutes. Because it is not yet possible to identify the origin **of** **IP** calls, it is not possible to develop a factor using **IP** demand data either. **The** Administrator's recommendation to freeze the toll-free allocation factor at 51% for the **2003 – 2004** period was accepted by the Commission in 2003.²⁴

²² For most TRS providers, the data submitted in the **1996** TRS center data request represented their initial reporting of toll free minutes.

²³ NECA's Annual Submission of TRS Payment and Revenue Requirements, for July 2003- **June 2004**, CC Docket No. 98-67 (May 1, **2003**) at 7.

²⁴ Telecommunications Relay Services and Speech-to-Speech Services **for** Individuals with Hearing **and** Speech Disabilities, CC Docket No. **98-67, Order**, 18 FCC Rcd **12823 (2003)**.

Since providers have the same problem of being unable to identify the jurisdiction of calls placed to 900 numbers, the same methodology was used to estimate interstate usage associated with these messages. The Administrator again recommends using the factor of 51% for the 2007 – 2008 funding period for both toll-free and 900 number minutes. The interstate minutes of use used to calculate the traditional TRS reimbursement rate reflect this methodology.

As displayed in Exhibit 1-1, we have included two proposed formula alternatives: (1) based on the projected cost and demand data submitted by the providers of Traditional TRS (Exhibit 1-1a), and (2) based on the provider data with certain cost disallowances.²⁵ The resultant formula levels are \$1.8747 per minute and \$1.6872 per minute respectively.²⁶ Exhibit 1-1b displays the results of the potential formula methodologies for compensating interstate Traditional TRS minutes for the upcoming funding year. In addition to displaying the two alternatives described above, the Exhibit quantifies the impact of including and/or excluding the costs associated with Marketing and Outreach.

With respect to disallowances, as described in Section 4.a supra, the Administrator compared the per-minute costs per category across the service providers. For Traditional TRS, the Administrator found that the relationship of Indirect Expenses to the sum of Communications Assistant and Relay Center Operations expenses for one provider was four times higher than that reported by other providers. Specifically, the relationship of indirect expenses to the sum of communications assistant expenses and relay center operations

²⁵ Displayed on Exhibit 1-1b

²⁶ To maintain the confidentiality of the TRS providers' data, the individual calculations are not included in the proposed formula exhibits. Only the total cost and demand projections and the calculation of the average cost per interstate TRS minute are shown.

expenses for this provider was reported at levels of **44%**for **2007** and **42%**for **2008**. The weighted average relationship for the other providers for these cost categories were 11.3% for **2007** and 11.8% **for 2008**. This provider's allowable indirect expenses were accordingly capped at **11.3%** of its combined communications assistant expenses and relay center operations expenses for **2007** and **11.8%** for **2008**.²⁷

Providers estimate that \$0.0513 per minute of their cost per minute for the funding year is attributable to Traditional TRS marketing and \$0.0737 of their cost per minute is attributable to Traditional TRS outreach activities.²⁸ The impact on the per minute Traditional TRS formula amount for excluding one or both of these functions is displayed on Exhibit 1-1b.

b. Demand Projection Methodology

As described supra, the Administrator used TRS providers' minute forecasts for the next two years to calculate some of the formula alternatives. Actual historical demand was used to estimate the traditional TRS minutes for the funding year. Interstate captioned telephone VCO minutes, initially reimbursed in July 2004, are included with traditional TRS minutes for this purpose.

As was done in the Administrator's **2006** submission, as suggested in comments by AT&T in **2005**²⁹, average daily minutes of use were used in the month-over-month growth methodology.

The traditional TRS forecast for **2007 – 2008** is based on data from the most recent thirteen months of actual minutes reported by providers. These data were used to develop an

²⁷ In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with hearing or Speech Disabilities (Order), CG Docket No. 03-123, DA 06-1345, adopted June 29, 2006, released June 29, 2006.

²⁸ To properly account for their removal from the formula, these amounts must also be adjusted for the cash in-lieu-of-benefit of \$1016. The calculations used in Exhibit 1-11 account for this adjustment.

average minutes of use per day for each month. The change in average minutes per day, positive or negative was then determined. The change in average minutes per day amounts were summed and divided by twelve. The resulting amount, either positive or negative, was applied to the number of days for the months from the current funding year for which data has not yet been provided and for the twelve months of the 2007 – 2008 funding year.

Traditional TRS minutes have experienced a decline of approximately 778 minutes per day during the most recent thirteen months.³⁰ Using February 2007 as the base month, this negative rate was used to adjust traditional TRS minutes from March 2007 through June 2008 to arrive at a total number of 13.7 million projected traditional TRS interstate minutes, including captioned telephone VCO minutes, for the July 2007 – June 2008 funding period.³¹

Exhibit I-1b displays the projected funding requirement associated with each of the Traditional TRS formula methodologies, with and without marketing and/or outreach expenses.

2. IP Relay Service Formula Development

a. Per Minute Compensation

In an April 2002 Order,³² the FCC authorized reimbursement of all IP relay minutes from the interstate TRS fund on an interim basis.³³ IP relay minutes were to be reimbursed

²⁹ Comments of AT&T, CC Docket 98-67 (May 13, 2005) at n. 4.

³⁰ This figure represents a netting of the decline in traditional TRS minutes of 1,021 minutes per day and growth in Captioned Telephone minutes of approximately 243 minutes per day.

See Exhibit 2, page 2A of 4, for development of the traditional TRS forecast.

³² Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Petition for Clarification of WorldCom, Inc., CC Docket No. 98-67, *Declaratory Ruling and Second Further Notice of Proposed Rulemaking*, 17 FCC Rcd 7179 (2002) (*IP Declaratory Ruling & Second FNPRM*) (clarifying that IP Relay falls within the statutory definition of TRS, and therefore, such services are eligible to recover their costs from the interstate TRS fund).

at the same rate as traditional TRS minutes because it appeared that there was little difference in the costs of providing these services.³⁴ Based on data provided in April 2005,³⁵ the Commission in that year determined it was appropriate to calculate a separate payment formula for IP relay service.³⁶

We have included two proposed formula alternatives: (1) based on the projected cost and demand data submitted by the providers of IP Relay service, and (2) based on the provider data with certain cost disallowances. As displayed in Exhibit 1-2, based on the projected cost and demand data submitted by the providers, the weighted average cost per minute of providing the service is \$1.2849.³⁷

Based on the analysis described in Section 4.a) above, it was determined that one provider had included sub-contractor costs where a contract had yet to be established and that one provider had projected indirect costs that, when compared to the sum of its communications assistant and relay center operations expenses, were significantly higher than the other providers' relationship of indirect expense to the sum of their communications assistant and relay center operations expenses. Accordingly, the sub-contractor costs for the first provider were excluded and indirect expenses for the second provider were limited to the

³³ Compensation was expanded to include IP Captioned Telephone Service at the same rate as IP Relay service in January 2007. Telecommunications Relay Services and Speech to Speech Services for Individuals with Hearing and Speech Disabilities CC Docket 03-123, *Declaratory Ruling* (rel. Jan. 11, 2007).

³⁴ *Id.* at ¶22.

³⁵ NECA's Annual Submission of TRS Payment and Revenue Requirements, for July 2005-June 2006, CC Docket No. 98-67 (April 25, 2005).

³⁶ See Telecommunications Relay Services, and Speech to Speech Services for Individuals with Hearing and Speech Disabilities, CC Docket Nos. 98-67 and 03-123, *Order*, 20 FCC Rcd 11405 (2005) at ¶ 14 (*June 28 Order*).

³⁷ To maintain the confidentiality of the IP Relay providers' data, individual calculations are not included in the proposed formula exhibits. Only the total cost and demand projections and the calculation of the average cost per IP Relay minute are shown.

same percent relationship of indirect expenses as the weighted average of the other providers' indirect expenses to the sum of their communications assistant and relay center operations *expenses*.

Specifically, \$15.6 million were excluded from the 2007-2008 costs for the first provider and the relationship of indirect expenses to the sum of communications assistant expenses and relay center operations expenses for the second provider that were reported at levels of 47% for 2007 and 60% for 2008 were limited to the weighted average relationship of the other providers. The weighted average relationship for the other providers for these cost categories were 11.3% for 2007 and 10.8% for 2008. This provider's allowable indirect expenses were accordingly capped at 11.3% of its combined communications assistant expenses and relay center operations expenses for 2007 and 10.8% for 2008. As displayed in Exhibit 1-2b, the result of these adjustments reduces the IP Relay cost per minute for the funding year to \$1.1609.

Providers estimate that \$0.0189 per minute of their cost per minute for the funding year is attributable to **IP** Relay service marketing and \$0.0371 of their cost per minute is attributable to IP Relay service outreach activities. The impact on the per minute **IP** Relay service formula amount for excluding one or both of these functions ~~is~~ displayed on Exhibit 1-2b.

b. Demand Projection Methodology

As described in Section 4.b) *supra*, the average daily growth projection methodology was utilized. Based on this data, the average daily minute growth for the period was 828 minutes. IP relay minutes were grown by that average daily amount multiplied by the number of days in each month, using February 2007 as the base, from March 2007 through

June 2008, to arrive at a total number of minutes for the July 2007 – June 2008 funding period of 82.5 million minutes.”

3. STS Formula Development

a. Per Minute Compensation

The FCC authorized reimbursement of interstate STS minutes, beginning in March 2001.³⁹ Because of the different characteristics of the service provided by the Communications Assistant (CA) when handling a STS call, i.e., communication of a speech conversation versus communication of a text conversation, a separate reimbursement rate has been developed for STS since its inception.

We have included two proposed formula alternatives: (1) based on the projected cost and demand data submitted by the providers of STS service, and (2) based on the provider data with certain cost disallowances. As displayed in Exhibit 1-3a, based on the projected cost and demand data as submitted by STS providers the weighted average cost per minute of providing the service is \$3.4546.⁴⁰

Based on the analysis described in Section 4.a) above, it was determined that one provider had projected indirect costs that, when compared to the sum of its communications assistant and relay center operations expenses, were significantly higher than the other providers’ relationship of indirect expense to the sum of their communications assistant and relay center operations expenses. Accordingly, this provider’s indirect expenses were limited

³⁸ See Exhibit 2, page 2B of 4, for development of the IP forecast.

³⁹ See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CC Docket No. 98-67, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 5140 (2000) (March 2000 Improved TRS Order).

⁴⁰ To maintain the confidentiality of the STS providers’ data, individual calculations are not included in the proposed formula exhibits. Only the total cost and demand projections and the calculation of the average cost per STS minute are shown

to the same percent relationship of indirect expenses as the weighted average of other providers' indirect expenses to the sum of their communications assistant and relay center operations expenses.

Specifically, the relationship of indirect expenses to the sum of communications assistant expenses and relay center operations expenses for this provider were reported at levels of **41%** for **2007** and **39%** for **2008**. The weighted average relationship for other providers for these cost categories were **2.6%** for **2007** and **2008**. This provider's allowable indirect expenses were accordingly capped at **2.6%** of its combined communications assistant expenses and relay center operations expenses for **2007** and **2008**. As displayed in Exhibit 1-3b, the result of these adjustments reduces the STS cost per minute for the funding year to **\$3.2596**.

Providers estimate that **\$0.0462** per minute of their cost per minute for the funding year is attributable to STS marketing and **\$0.0785** of their cost per minute is attributable to STS outreach activities. The impact on the per minute STS formula amount for excluding one or both of these functions is displayed on Exhibit **1-3b**.

b. Demand Projection Methodology

As described in Section 4.b) *supra*, the average daily growth projection methodology was utilized. Based on this data, the average daily minute growth for the period was **12** minutes. STS minutes were grown by that average daily amount multiplied by the number of days in each month, using February **2007** as the base, from March **2007** through June **2008**,

to arrive at a total number of **minutes** for the July 2007 – June 2008 funding period of 253 thousand **minutes!**

4. VRS Formula Development

a. Per Minute Compensation

In the *March 2000 Improved TRS Order*,⁴² the Commission concluded that **VRS** was a form of **TRS** and permitted **VRS** to be compensated on an interim basis, using the same average per-minute methodology used for traditional **TRS**, so that providers could recover their reasonable costs related to providing **VRS**. Although reimbursement for **VRS** was available beginning in October 2000, providers did not begin to offer **VRS** until the FCC authorized waivers of certain service requirements in December 2001.⁴³ Since that time, the number of **VRS** providers has grown from two to ten.

We have included for consideration six proposed formula alternatives: (1) based on the projected cost and demand data submitted by the providers of **VRS**, (2) based on the provider data with certain cost disallowances, (3) the actual weighted average cost per minute reported by the providers for calendar year 2006 (\$4.5568)⁴⁴, (4) a projection of the historical cost per minute into the upcoming funding year by growing the historical cost per minute by inflation, (5) one that is based on the provider as-submitted cost data and the Administrator's demand projection based on historical actual demand for the service, and (6) one that utilizes the

⁴¹ Given the paucity of demand for this service, averaging fewer than 700 interstate minutes per day, any variability in demand for service from an individual provider can have significant impact on the per minute cost for not only that provider, but the weighted average cost as well.

⁴² *March 2000 Improved TRS Order* at ¶34.

⁴⁴ See Telecommunications Relay Services and Speech-@-Speech Services for Individuals with Hearing and Speech Disabilities, CC Docket No. 98-67, *Order*, 17 FCC Rcd 157 (2002).

Administrator-adjusted cost data with the Administrator's demand projection to compute a per minute cost for VRS.

As displayed in Exhibit 1-4a, based on the projected cost and demand data submitted by the providers of VRS service the weighted average cost per minute of providing the service is \$6.7738⁴⁵. Exhibit 1-4b displays the results of the remaining alternative formula methodologies for compensating VRS minutes for the upcoming funding year.

Based on the analysis described in Section 4.a) above, it was determined that some providers had included Research and Development costs in their projections previously determined to be not allowable for recovery from the fund.⁴⁶ Additionally, two providers included projected costs associated with relay center operations and indirect expenses that appear to be beyond the scope of meeting the minimum requirements of providing VRS. Accordingly, these providers' expenses were reduced to reflect these exclusions. As displayed in Exhibit 1-4b, the result of these exclusions reduces the VRS cost per minute for the funding year to \$6.1393.

Providers estimate that \$0.0686 per minute of their cost per minute for the funding year is attributable to VRS marketing and \$0.2629 of their cost per minute is attributable to VRS outreach activities. The impact on the per minute VRS formula amount for excluding one or both of these functions is displayed on Exhibit 1-4b.

b. Demand Projection Methodology

⁴⁴ The median actual reported cost for 2006 is \$6 1813 per minute.

⁴⁵ To maintain the confidentiality of VRS providers' data, individual calculations are not included in the proposed formula exhibits. Only the total cost and demand projections and the calculation of the average cost per VRS minute are shown.

⁴⁶ In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, *Order on Reconsideration*, CG Docket No. 03-123, FCC 06-87. (rel. July 12, 2006).

As described in Section 4.b) *supra*, the average daily growth projection methodology was utilized. Based on this data, the average daily minute growth for the period was 3,120 minutes. VRS minutes were grown by that average daily amount multiplied by the number of days in each month, using February 2007 as the base, from March 2007 through June 2008, to arrive at a total number of minutes for the July 2007 – June 2008 funding period of 65.1 million minutes.

5. Contribution Factor Calculation

In addition to the funding requirements for the four relay services, administrative expenses of approximately \$1 million, including TRS Council meeting costs and the cost of an annual audit by an independent auditor, will need to be included in the total fund requirement. Interest on invested funds for the July 2007 – June 2008 period is projected to be approximately \$6 million.

It is anticipated that there will be a surplus of approximately \$45 million at the end of the current funding year, i.e., after June 2007 minutes are paid in July. The administrator recommends retaining this projected surplus in lieu of adding a safety margin to the projected reimbursement. This is believed to be adequate to protect the fund in the event that actual minute growth exceeds forecast levels, or if the contribution base in July, at the time of carrier billing, turns out to be less than the April base used to calculate the contribution factor, as has previously been the case.

6. Program Administration

- a) Interstate TRS Fund Advisory Council Report